IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2719 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KOSAMBA GRAM PANCHAYAT

Versus

STATE OF GUJARAT

Appearance:

MR ANAND YAGNIK, Ld. Advocate for
GIRISH PATEL ASSOC for Petitioner
MR. S.N. SHELAT, ADDL. ADVOCATE GENERAL
with MR V.M. PANCHOLI, ASSTT. GOVERNMENT PLEADER
for Respondent Nos. 1 to 5.
MR AKSHAY MEHTA with MR JAYANT PATEL,
Advocate for respondent No.6
MR DHAVAL C. DAVE with MR. N.V. ANJARIA,
Ld. Advocate for Respondent No.7

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE D.H.WAGHELA

Date of decision: 07/10/1999

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The petitioner Gram Panchayat has, in this petition, challenged the Resolution of the State of Gujarat, dated 9.9.1996 at Annexure "N" to the petition, and the consequential order made by the respondent No.4 Collector on 31.12.1996 at Annexure "P" to the petition, by which the respondent No.7, which is a religious institution, was granted land admeasuring 9,332 sq.meters from survey No.110 part of village Kosamba in Valsad District, by regularising the encroachment on the land in question. The challenge against these orders is made on the ground that they are issued in violation of the provisions of Sections 37, 38, 61 and 62 of the Bombay Land Revenue Code and Rule 42 of the Gujarat Land Revenue Rules, 1972, and that they also violate the Coastal Regulation Zone Notification issued by the Ministry of Environment and Forests on 19th February, 1991, as amended on 9.7.1997 as well as the Coastal Zone Management Plan of Gujarat, framed under Section 3(2)(v) of the Environment Protection Act, 1986, on 27th September, 1997. The impugned orders are also challenged on the ground that they violate the Government Resolution dated 30th January, 1989 and the Notifications of the Government of India issued in 1982, as also the provisions of the Gujarat Panchayats Act, as well as the Constitutional provisions of Articles 14, 19, 21, 38, 48A and 51A. A direction is sought on the respondent authorities to take over the said land from the respondent No.7 and restore it to its original natural condition. A direction is also sought on the respondent authorities to hand over the land in question to the petitioner Gram Panchayat for its administration and public use and to allow the people of the village to put it to its original use. A further direction is sought on the respondent No.7 institution to pay the cost for the restitution of environment and ecology of the land in question and to pay `pollution fines'. In the alternative, a direction is sought on the State authorities to `de-regularise' the encroachment and the unauthorised structures thereon and transfer and alienate the same in favour of the petitioner Gram Panchayat for its use. Prayer for appointment of an expert committee to study the issue and placing its report before the High Court for guiding the High Court, was also made in the petition.

2. By its resolution dated 9.9.1996, the State Government regularised the encroachment of 9,332 sq.meters of land which was occupied by the respondent No.7 - Bochasanwasi Shri Akshar Purushottam Sanstha.

According to the petitioner, the encroachment was made by the respondent No.7 by constructing thereon without any authority, the Swaminarayan temple, air-condition Sant Avas, a huge `Sabha Khand', kitchen, store-rooms, library, garrage and staff quarters within 500 meters of High Tide Line, particularly within 200 meters of High Tide Line which is `No development zone', in Revenue Survey No.110 of Kosamba village, which is situated on the sea-coast. According to the petitioner, the area lies between the sea-coast of Arabian sea and the creek known as Vanki river.

2.1 It is the petitioner's case that Kosamba village is situated in the district of Valsad near Tithal, which is a place known for its beautiful beach on the Arabian coast. It is stated that as the sea-shore of the Kosamba is not exploited, its outstanding beauty, particularly that of the beach, has remained intact. It is also stated that the sea-shore of Kosamba village is far more beautiful than the sea-shore of Tithal. There is a common coast line and a road connecting Kosamba village with Tithal village, which is 2 K.M away. Valsad is about 4 K.M far from Kosamba. Kosamba is inhabited predominantly by fishermen and its population is around 10,000 according to the petitioner. It is stated that the people of the village are believers in Lord Shiva, but in the last decade some sects and denominations of Hindu religion have made inroads. It is stated that the sect of Pandurang Athawale and Swaminarayan sect are two of them. The village is spread over the areas divided by a creek known as Vanki river, and the portion situated between the said creek and the coast of the sea, is known as "Tepar". The said `Tepar' area is also known as Parghi Falia as fishermen community of Parghi sub-caste are having their residences in that area. The said area is a village site land since year 1947 as per the Revenue records. According to the petitioner, there are two wells in the said area, which provided drinking water to the people. These wells were built over a stream of drinking water, which was popularly known as "Gangadhara" and had religious significance. According to the petitioner for more than five decades people of surrounding villages gathered there on Shivratri and they also lit holi near the beach in the said area of `Tepar' around Pargi Falia. It is also stated that the open land around Pargi Falia which was waste land in the village site was also used by children as a playground. There is a primary school near Pargi Falia. A cemetery for children is also there on the sea-side of `Tepar'.

2.2 It is further stated that in mid 1980's people of

Kosamba started constructing a temple of Shiva near Parghi Falia in `Tepar'. A substantial part of `Tepar' forms Gamtal of Kosamba village and the temple of Shiva constructed by the people was situated on the disputed land. It is stated that the land in dispute was owned by the respondent State Government and it was `as a matter of fact and law' held by the respondent State as a trustee and it's beneficiaries are the public at large. According to the petitioner, the State was under duty to protect the natural resources and the said property therefore, could not have been converted in to a private ownership, as it was on a sea-shore. It is stated that the land in dispute was being used for community purposes for decades and it was cordoned off by the petitioner Panchayat for preventing encroachment, by constructing a katchha boundary.

2.3 It is stated in paragraph 8 of the petition that in the year 1990-91, the respondent No.7 institution requested the petitioner Gram Panchayat through one Mr.Karsanbhai Gopalbhai Tundel of village Kosamba to give them the temple of Shiva and surrounding land to carry on social and religious activities and to carry out `Jirnodhdhhar' of the temple of Shiva. Impressed by the approach by the respondent No.7 institution, the petitioner Gram Panchayat and senior and respectable citizens of the village collectively passed a resolution on 19.11.1990 handing over the temple of Lord Shiva for carrying on social and religious activities and allowing the respondent No.7 institution to go ahead with further construction in and around the temple for the said purpose. That resolution dated 19.11.1990 of the Panchayat is annexed at Annexure "B" to the petition. It is stated that thereafter, the deciples and sadhus who were the representatives of the respondent No.7 institution, started residing in the temple of Lord Shiva and a kitchen as well as a room known as old `Sant Aavas' and a store-room were constructed to accommodate the followers of the respondent No.7.

2.4 It is then stated that the respondent No.7 institution started making further constructions around the temple and the construction of pucca boundary caused discomfort to the people. It is stated that the followers of the respondent No.7 came in direct conflict with the people of village for the first time when they objected to lighting a fire on the auspicious day of holi in the vicinity of temple. Altercation also took place and the matter came to an end at the intervention of the influential persons of the area. It is also stated that the conflict between the followers of the respondent No.7

institution and the village people increased as the respondent No.7 started "deconstructing" the original temple of Shiva, in the name of `Jirnodhdhhar' (renovation). It is further stated that the conversion of the people of the village and incorporating them in the Swaminarayan sect also added fuel to fire. It is further stated that the conflict between the people of the village and the followers of the respondent No.7 institution grew as the time passed and efforts on the part of the respondent No.7 to establish their independent identity increased hostility between the two groups. It is alleged that the construction of new temple of Swaminarayan on the `deconstructed' temple of Lord Shiva became a symbol of cheating the village people and the progress in the construction of Swaminarayan temple, by passage of time strengthened the sense of villagers being cheated by the respondent No.7 institution. It is also alleged that the respondent No.7 is only interested in the land in question situated on the sea-coast and not in doing any social and religious activities. It is also alleged that it was also understood by the Gram Panchayat that the institution was in fact interested in constructing a monumental Swaminarayan temple and make it a place of tourism and pilgrimage out of it. It is further alleged that the conflict intensified as the point of disagreement increased.

2.5 In paragraph 12 of the petition it is alleged that "the respondent No.7 being politically powerful and knowing full well that it is unofficially the religion of the respondent State of Gujarat, brought pressures on the people of the village and respective authorities from all quarters and instead of taking action against the respondent No.7 for its encroachment and increasing unauthorised construction, the respondent State started providing Police protection to the respondent No.7 and for its followers giving free hand to the respondent No.7 to carry on with its illegal and unauthorised activities" which in turn antagonised the people of the village claiming right over the community resources including sea-shore within the revenue limits of the village. In paragraph 13 it is alleged that the conflict between the people of the village and the followers of the respondent No.7 Sanstha reached its peak when in the year 1995-96 the respondent No.7 completed fortification of their encroachment with pucca boundary and blocked the age old Tithal-Kosamba road situated parallel to the coast and attempt was made to give a diversion outside the boundary constructed by them.

2.6 It is then alleged that on 5th Feb. 1996, the petitioner Gram Panchayat passed a resolution cancelling its earlier resolution dated 19.11.1990 and thereby cancelling the permission given to the respondent No.7 for renovation of the temple and for making constructions around the temple. It is stated that the respondent No.7 was allowed construction only for the purpose of `Jirnodhdhhar' and the additional construction of other small structures was allowed to accommodate the followers staying there at the site and also for the purpose of fulfilment of their basic and fundamental amenities. It is stated that permission of the authorities for carrying out construction was not obtained by the respondent No.7. On 15.2.1996, the petitioner wrote a letter to the State of Gujarat, bringing to its notice the encroachment and illegal construction by the respondent No.7 within 500 meters of High Tide Line and for taking action against them, as alleged in paragraph 15 of its petition. On 15.2.1996, the respondent No.7 had written a letter to the Collector as per Annexure "F" to the petition, pointing out that they had sent a proposal to the Government on 28.2.1991 in respect of the land in question.

2.7 It will be noted from the representation dated 5.2.1996 sent by the petitioner Panchayat to the Collector that it was specifically stated therein that the land in question was given to the respondent No.7 by the Panchayat for the purpose of temple. It is stated in that representation that the land was most willingly given while reserving the right to use the road. It was specifically stated that the people of the village were not against the temple, but because the religious sect of the respondent No.7 stopped them from lighting holi and they had made constructions which had the net effect of closing the original road, that had created an unrest amongst the people. It was stated that the very denomination which was invited by the Panchayat had started working contrary to the interest of the people and hurting their religious feelings. It was prayed that the construction of wall on the eastern side of the temple should be stopped in view of the public road from the bridge of river Waki till the house of Lalabhai. Thereafter on 7.2.1996, the Panchayat wrote another letter to the Police Inspector, alleging that the respondent No.7 institution was carrying on illegal construction which should be stopped and that they were using water from the wells for construction purposes, which also should be stopped. On 15.2.1996, the Panchayat wrote a letter to the Revenue Commissioner of the State, alleging that there was illegal encroachment

on the road by the respondent No.7 and that by making construction within 500 meters of the sea-coast, the respondent No.7 had committed illegality which warranted removal of such construction. On 16.2.1996, the Mamlatdar issued notice to the respondent No.7 asking them to remove the construction which was unauthorisedly made on the Government waste land and hand over its possession to the Talati-cum-Mantri of Kosamba within ten days. On 22.2.1996, by its letters Annexure "H" collectively, the respondent No.7 informed the Collector that the proposal of the respondent No.7 was pending with the Government. It was stated therein that there was an old temple in the land in question and the land was handed over to the respondent No.7 by the village people on 4.2.1990 by a decision taken in the Gram sabha and the religious activities were thereafter started thereon. It was also stated that authorisation was obtained from the Panchayat for the construction which was to be made by the respondent No.7, through the leader of the community Krishnabhai (Karsanbhai) Tundel. It was also stated that the institute intended to construct a temple having archaeological excellence at the same place. The Collector was therefore requested not to take any action till the proposal was decided upon by the Government. Karshanbhai Tundel had made an affidavit on 22.2.1996 (Annexure "H" collectively), in which it was stated that he had started construction of a temple in Pargi Falia of `Tepar' in the year 1958, but the construction work could not be completed and therefore, he had, with the consent of village people, handed over the possession of the land in question to the respondent No.7 institution for completing the temple. The respondent No.7 again wrote a letter dated 7th March, 1996 (copy at Annexure "I"), to the Collector, giving the particulars of the construction which already was existing in the land in question. It was pointed out that there was construction in an area of 2266 sq.meters and there was open land of about 10,835 sq.meters. It was also pointed out that the institution had spent a sum of Rs. 53,79,127/- in the construction of the temple and its complex. It was submitted by them that if the construction is ordered to be removed the institution would suffer a loss of Rs. 85 lakhs. It is stated that the institution was prepared to pay the price of the land and fine, if any, for getting the occupation rights in respect of this land.

2.8 The Collector in his communication dated 7th March, 1996, addressed to the State Government gave particulars of the land in question, pointing out that after the land was handed over to the respondent No.7 institution in the year 1990 under a resolution of the

Gram Panchayat without demarcating the land, it was in possession of the said institution and that it had constructed a big "sant kutir" and had started the construction of temple on the existing plinth. It was pointed out that in February, 1996, the village people had started objecting to this and tension had mounted, requiring Police bandhobast to be made. It was pointed out that on 4th March, 1996, there was a conflict between the followers of the Swaminarayan sect and other persons of the village over closure of the road and there were complaints and counter complaints filed by them in the Police station. It was stated that the root cause of the conflict was the stoppage of the road and that if the road was opened up, it appeared to the Collector that the dispute would end. The Collector wrote a further letter dated 10.3.1996 to the Government, pointing out the disputes which had arisen after the institution was allotted the land in 1990 under a resolution of Gram Panchayat and the leaders of the village. It was stated that the institution had asked for regularising the encroachment of the land which came to its possession in 1990 because of the ignorance of law of the leaders of the village and the institute. It was also stated that the institution was ready to pay the market price of the land and fine. It was then stated that on either side of the land in question, there were residential areas and on it's western side was the Arabian sea. It was stated that as per the panchakyas, the price of the land would be Rs. 101 per square meter. The Collector also pointed out that the encroached land was within 500 meters of HTL. It was pointed out that an area of 8217 square meters of land could be considered for regularisation of encroachment. It was pointed out that out of the total area of 10622 sq.meters which belonged to the State Government, the village people had an objection in respect of an area of 2405 sq.meters. According to the Collector, there was no objection to granting the land excepting the land between Sant kutir and the river to the Swaminarayan temple. It was also stated that there was possibility of amicable settlement between rival groups. The Deputy Collector had received the report of the Mamlatdar on 9.7.1996 on the above lines. The District Superintendent of Police had also on 10.3.1996 opined that there was no objection to grant of land to the Swaminarayan temple, except the land between Sant kutir and the river. The Government on 11.4.1996 wrote to the Collector to report on the nine specific items mentioned in that letter. This was done with a view to consider as to whether the encroachment by the respondent No.7 should be regularised as proposed by them. The Collector sent his remarks by his communication dated

11.7.1996 to the Government, pointing out the particulars of the land in question, which was part of survey No.110, the fact that the land vested in the Government, that it was part of the village site, that there was dispute raised by the village people in respect of 2342 sq.mtrs. of land and that there was no objection to taking of an appropriate decision for regularisation of the encroachment of the remaining 8282 sq.mtrs. of land on which the institution had constructed Sant nivas, store room, garrage etc. and there was the temple standing thereon. It was also stated that the market price of the land was Rs. 110 per square meter. It was reported that the institution was prepared to pay the market price. It was also reported that the land in question was within 500 meters of the HTL and further that in the adjoining survey Nos. 108 and 109, there already existed constructions which were also within 500 meters. It was stated that the institution was to rejuvenate the old temple, which was constructed in 1958. It was also stated that as recommended by the Mamlatdar, Valsad on 3.6.1996, the encroachment could be regularised as a special case. The Deputy Collector also had, by endorsement dated 8,6.1996, stated that there did not appear to be any objection to regularising the encroachment. In his report on item (6), the Deputy Collector informed the Government that the road between Sant kutir and the river of 15 ft. width was made open for the passage of the village people, but sabha mandap construction which existed between Sant kutir and that road was not removed, against which the village people were objecting. The Town Planning and Evaluation Department, Valsad Branch in their communication dated 30.5.1996 indicated the market price of the land in question at Rs. 110 per sq.meter. The District Inspector of Land Records in his communication dated 1.7.1996, addressed to the Collector, pointed out that from the original survey No.110, on 10.6.1921 survey No.314 was separated while on 7.7.1925 survey No.315 was separated and in the remaining part of survey No.110, there was Swaminarayan temple. In the note made below this communication, it was recorded that between Sant kutir and Sabha mandap, formerly there was a road used by the village people and vehicles on that road and that it was 65 meter in length and 6 ft. in width and that road was closed down due to construction. It was pointed out that the area of that road was 309 sq.mtrs.

2.9 After gathering all the aforesaid information, the State Government made a resolution on 9.9.1996 in context of the proposal which was made by the respondent No.7, regularising the encroachment made by the

respondent No.7 in respect of the area other than the public road and wells out of the total area of 10,622 sq.mtrs, which belonged to the State Government in survey No.110 part, on payment of the market price at the rate of Rs. 110 per sq.mtrs. and the fine as was payable under the Revenue law. Certain conditions were also imposed while regularising the occupation of the respondent No.7 of the land in question. These conditions included a condition which laid down that no new construction other than in place of the existing construction would be made within 500 meters of the High Tide Line, as provided by the Coastal Zone Regulations. It was also required of the respondent No.7 to make the road which they had constructed, a pucca road. Then there was a condition for making afforestation towards the sea-coast side. On the basis of this resolution, the Collector made an order on 31.12.1996, stating that out of the total area of 10,622 sq.mtrs. of survey No.110 part, which was in possession of the institution, an area of 9,332 sq.mtrs alongwith the existing constructions was regularised on payment of the market price of the land, which was worked out at Rs. 10,26,520/- and fine at the rate of Rs. 250 per year, as also local fund and education cess was also fixed at Rs. 680/-. It was specifically stated that the portion consisting of the Tithal - Kosamba road and two wells known as "Gangajal", admeasuring 1290 sq.mtrs. was not being regularised. Several conditions were imposed in the grant, which included a condition that the institution will not encroach upon the public road, which was to be kept open for the village people and that no new construction will be made within 500 mtrs. of the High Tide Line as per the Coastal Zone Regulations, except in place of the existing construction - namely the old temple, Sant nivas, Sabha khand, store room, boring, garrage, book stall and staff quarters.

3. We have narrated in detail the nature of controversy raised by the petitioner Panchayat to point out that this is not a simple case filed only for protecting the coastal line and forest environment or ecology or beauty of the sea-shore, but its roots lie in the disputes that arose when in the land which was handed over to the respondent No. 7 in 1990 by the village Gram Sabha, the road came to be obstructed in February, 1996 and the followers of the respondent No.7 and the non-followers of the denomination in the village filed complaints and counter complaints. Though for a long period the activities of the respondent No.7 were going on after 1990, there was hardly any dispute and it was only when the road came to be obstructed that all the

possible contentions were sought to be raised by the petitioner Panchayat. It is significant to note that in the communication dated 5th Feb. 1996 of the Panchayat, addressed to the Collector, it was specifically stated that the land was `willingly and with great love' given by the Panchayat and the leaders of the village to the Swaminarayan sect for the purpose of the temple and that only the right over the original public road was reserved. The grievance at that stage was that the very people who were invited by the Panchayat and the village people were now obstructing the road and stopping them from lighting holi, which hurt the feelings of the village people. It was specifically stated in that communication that they were not against the construction of the temple. As noted above, there was a sudden change in the attitude of the petitioner Panchayat after Feb. 1996 and it soon took up the contention that the entire occupation of the land by the respondent No.7 was unauthorised and that it should be ordered to be handed over back to the Panchayat.

3.1 The resolution which was made on 4.2.1990 which is at Ex.I annexed to the affidavit-in-reply of the respondent No.7 shows that the village people in that meeting resolved to hand over the work of construction of the temple, which was originally to be done by Karsanbhai Tundel, to the respondent No.7 institution. The averments made in the petition which are referred to above and the communication dated 5th Feb. 1996 of the Panchayat to the Collector, which is just mentioned, support the contention of the Respondents that the Gram Sabha had passed the resolution dated 4.2.1990, by which the land in Pargi Fadia where the temple was to be constructed by rejuvenating the existing temple, was handed over to the respondent No.7 institution. In the resolution dated 4.2.1990, it was stated that the Gram sabha willingly and unanimously resolved to dedicate the land in question for completing the construction of the temple and installing the deities of Aksharpurushottam Maharaj and other deities of Ganpathi, Hanumanji etc. It was also stated that if it was convenient to the respondent No.7 institution, Shivling and the idols of Shiva and his family may be installed.

3.2 On 17.11.1990, an application was made by the institution for getting its building plan sanctioned. That application was addressed to the Sarpanch of the Gram Panchayat and a copy thereof is at Ex.II to the affidavit-in-reply of the respondent No.7. Three copies of the plan seem to have been submitted to the Panchayat with that application. Thereafter, a resolution was

passed on 19.11.1990, being Resolution No.3 by the petitioner Panchayat, referring to the said application dated 17.11.1990 of the respondent No.7, which was received by it through Karsanbhai Mavjibhai Tundel, and unanimously resolving to approve the construction that may be undertaken by the respondent No.7 on the land in question which was handed over to it by the village people for the purpose of temple. There is a communication dated 21.11.1990, a copy of which is at Annexure-III to the affidavit-in-reply of the respondent No.7, addressed by the Talati-cum-Secretary of the Gram Panchayat to the respondent No.7 institution, forwarding two copies of the plan duly sanctioned and signed by the Sarpanch, pursuant to the resolution dated 19.11.1990. A copy of that plan which is at Ex.VII shows that it was duly signed on 21.11.1990 by the Sarpanch of the Panchayat and it bears the seal of the Panchayat.

3.3 The aforesaid documents would indicate that after the land was handed over to the respondent No.7 under the Gram sabha resolution dated 4.2.1990, the plans submitted by the respondent No.7 to the Gram Panchayat were sanctioned by the Gram Panchayat and the Talati-cum-Mantri had returned two copies of the duly sanctioned plan to the respondent No.7 while retaining a copy on the record of the Panchayat, as stated in the communication dated 21.11.1990. We are referring to these documents because there is some dispute raised as to whether the construction which was made by the respondent No.7 was authorised or not. Prima-facie these documents show that the plans were authorised for construction. At the stage of arguments, the learned Counsel tried to raise an issue that the Panchayat had no authority to approve construction plans. That is far away from the statutory provisions. Under Section 93(1) of the Gujarat Panchayats Act, 1961, which was applicable at the relevant time, it was, inter-alia, provided that no person shall erect or re-erect or commence to erect or re-erect within the limits of the Gram or Nagar as the case may be, any building without the previous permission of the Panchayat. Having granted the permission for construction and, before that, having handed over the land to the respondent No.7, it would atleast not be open for this Panchayat which had approved the plan on 19.11.1990 to raise such a contention at this belated stage in a petition filed in March, 1999, that all that was actually done by the respondent No.7 institution at the behest of the Panchayat and the village people could not have been allowed to be done by the Panchayat. Admittedly, the Panchayat was not the owner of the land in question and it was for the State Government alone to

consider the question of regularisation of encroachment. The problem was raked up by the petitioner Panchayat only after the rival groups, one belonging to the followers of the respondent No.7 and the other opposing them, clashed resulting in criminal cases against each other, and, the somersault taken by the Panchayat is clearly relatable to such clashes. There was absolutely no whisper of any illegality committed by the respondent No.7 on the ground of the construction being unauthorised right from the year 1990 when the land was given to the respondent No.7 till the disputes arose in Feb. 1996 when a portion of the road on the eastern side of the land was closed due to the construction made by the respondent No.7. There was hardly any question of anyone objecting much less the Panchayat, against the construction prior to that point of time.

4. The learned Counsel appearing for the petitioner strongly contended that the grant was given by the State Government because it wanted to favour the respondent No.7 religious institution. It was submitted that no land could be granted to a religious institution in this manner by the State. It was argued that there was a breach of public trust in giving away the sea-shore land to the respondent No.7 for the purpose of constructing a temple. As noted above, it is averred in the petition, that the religion of the respondent No.7 was an informal religion of the State Government, thereby clearly alleging that the State Government had acted malafide. Therefore, the first question that arises before us is whether the State Government can grant any land to a religious institution. The learned Additional Advocate General strongly defended the grant on the ground that it was neither discriminatory nor illegal.

4.1 Every religious denomination or any section thereof has, subject to public order, morality and health, a fundamental right under Article 26 of the Constitution to establish and maintain institutions for religious and charitable purposes, manage its own affairs in the matters of religion and to own and acquire immovable property and administer it in accordance with law. There is freedom of conscience and right to free profession, practice and propagation of religion guaranteed by Article 25 of the Constitution, subject to public order, morality and health and to the other provisions of part-III of the Constitution, which guarantees the fundamental rights. The State, however, has power to make law to regulate or restrict any economic, financial, political or other secular activity associated with religious practice and provide for social

welfare and reform or for throwing open of Hindu religious institution of a public character to all classes and sections of Hindus.

4.2 The existence of the fundamental right to freedom of religion does not depend upon the disagreements or dislikes of those who do not want to profess it. They have a right not to profess a particular religion, but have a duty not to obstruct others from lawfully exercising their right to profess, practice or propagate their religion. In these sensitive areas of human beliefs, tolerance, mutual understanding and faith in the supreme norm that all religions are meant for spiritual welfare of the people and aimed at mental peace and happiness, love and amity, that surely will help mankind to progress should govern the field. The Constitution ensures that there can be no religious tenets or practices which are against public order, morality and health and arms the State with power to make law for achieving the ultimate constitutional goal of social welfare which should also be the ultimate goal of all religions.

4.3 Acquisition of immovable property by any religious institution can be made by any of the legally permissible modes including a grant of such property by the State. There is no prohibition on the State, under the Constitution, on its right to make grants of immovable property to any religious institution. The States have executive power to acquire, hold and dispose of property under Article 298 of the Constitution. Therefore, in exercise of its executive power to dispose of its property, it would be open for the State Government to grant land in accordance with law to any person including any institution set up by a religious denomination or section thereof. This executive power of the State Government cannot be exercised in a manner that would infringe the fundamental rights or in violation of law. If the grant of immovable property is arbitrarily made so as to deny right to equality enshrined in Art. 14 of the Constitution or has the effect of impinging upon the right to life as spelt out from Article 21, it could be rendered ineffective by judicial review.

4.4 The question whether the State Government has acted arbitrarily with a view to favour respondent No.7 in making the grant and regularisation of the encroachment on the land, would depend on as to whether the relevant factors which are required to be taken in to account were taken into account by the State Government. For the purpose of examining whether there is element of

arbitrariness or discrimination in the grant, the process of judicial review would involve examination of objective factors such as: the existence of power authorising such grant, existence of facts which warrant exercise of such power, the manner in which the power is exercised, the observance of the procedural requirements, whether there is breach of any statutory provision or violation of any of the fundamental rights as also whether the principles of natural justice or fairplay are observed, when applicable. There is material on record as noted above, to indicate that the State Government, for the purpose of considering the proposal made by the respondent No.7 to regularise its occupation of the encroached land, had taken into consideration the material aspects by calling for the reports from the Collector. The views of the Panchayat and the village people were also before the authorities. The State Government had called for the report as regards the market value of the land. As noted above, the executive power of the State under the Constitution authorises it to acquire, hold and dispose of property. There is no dispute about the fact that the land in question was vesting in the State Government. The provisions of Section 37 of the Bombay Land Revenue Code, inter-alia, empower the State Government to dispose of such lands in such manner as it may deem fit, subject to the rights of way and other rights of individuals legally subsisting. Chapter VI of the Bombay Land Revenue Code deals with grant, use and relinquishment of unalienated land. It requires permission of the Mamlatdar to be obtained by any person desirous of taking up unoccupied land, which has not been alienated and provides for penalties for unauthorised occupation of the land. Section 62 of the Code, inter-alia, provides that it shall be lawful for the Collector subject to such rules as may be made from time to time by the State Government, to require the payment of a price for unalienated land or to sell the same by auction and to annex such conditions to the grant as he may deem fit, before permission to occupy is given under Section 60. Rule 42 of the Gujarat Land Revenue Rules, 1972, relates to disposal of land for building and other purposes and provides that unoccupied land required or suitable for building sites or other non-agricultural purpose shall ordinarily be sold after being laid out in suitable plots by auction to the highest bidder whenever the Collector is of the opinion that there is a demand for land for any such purpose, but the Collector may, in his discretion, dispose of such land by private arrangement, either upon payment of a price fixed by him, or without charge, as he deems fit. Thus, the State Government and the Collector had ample statutory powers to grant the land to the

respondent No.7. The land in question was granted for a market price, which was ascertained by the State Government. There have been conditions imposed in the grant which is made on new tenure basis. The conditions incorporated in the grant of land shows that the public road was kept apart and that it was not to be encroached upon by the respondent No.7. In the `Kabulat', which was executed under Rule 43 of the Gujarat land Revenue Rules by the respondent No.7, the respondent No.7 had undertaken to abide by all the terms and conditions which were included in the impugned order dated 31.12.1996. It is evident from the record that the State Government had, on the basis of the proposal contained in the application dated 28.12.1991 sent by the respondent No.7, a copy whereof is at Ex.V to the affidavit-in-reply of the respondent No.7, after applying mind to the relevant aspects of the matter and taking into consideration the responses from the Collector who had also referred to the rights of the village people in a portion of the total area of land which was encroached upon by the respondent No.7, taken its own decision in the matter and granted the land to the Respondent No.7. The grant of land has been made within the lawful exercise of the powers of the State Government, and is not shown to have been made in any arbitrary or discriminatory manner in violation of any of the fundamental rights or in violation of any legal provision.

4.5 In his affidavit, the Collector has stated on behalf of the respondents Nos. 1 to 5 that a total area of 13,101 sq.mtrs. out of survey No.110 part was in occupation of the respondent No.7 institution since 1990. Out of this area, land admeasuring 2479 sq.mtrs. was of the ownership of the Government of India and therefore, that land was not allotted to the respondent No.7. The possession of land admeasuring 1290 sq.mtrs. was also not given to the respondent No.7 because there was Tithal Kosamba Road passing through that land and two `religious wells' were situated thereon. It is stated that the members of the public had a right of passage over that road and right to use water from the wells. It is stated that the said land is open for village people and they are using it. It is further stated that the respondent No.7 had paid Rs. 10,43,700 to the State Government as the price of 9,332 sq.mtrs. of land. It is also stated that there were structures already in existence in the land and that the respondent No.7 was in possession thereof since 1990. The State Government by its resolution dated 9th September, 1996 had regularised the encroachment in pursuance of which the Collector had issued the order dated 31.12.1996, a copy of which is

annexed at Annexure-I to the said affidavit-in-reply. It is stated in paragraph 9 of the said reply that the respondent No.7 has taken permission from the Environment Department as regards renovation to be carried out on the premises in question. It is stated that the land was of the ownership of the Government and there was no existing right of any villagers or any community on the land in question. It is further stated that there was no customary or easement right whatsoever over it prior to 1990. It is also stated that the petitioner is not a Sarpanch of Kosamba village and he has ceased to be the Sarpanch after 12.5.1999. A reference is made to Special Civil Application No. 4345 of 1999 in this regard. It appears that this petition was presented through Rajeshbhai P. Tundel, who was the Sarpanch and by order dated 17.4.1999 of the DDO, was removed as Sarpanch under Section 57(1) of the Gujarat Panchayats Act. Thereafter, that order was set aside by the Additional Development Commissioner by his order dated 10.6.1999 as pointed out by the learned Counsel for the petitioner. It appears that the writ petition which has been filed is in respect of that order. We are however, not concerned with that aspect of the matter in a petition of the present nature.

4.6 The Collector in his affidavit-in-reply has further stated that all the relevant aspects were taken into consideration by the State Government when the encroachment was regularised and that the petitioner had never challenged the order dated 31.12.1996. It is stated that the structure which was in existence in 1990 was renovated by the respondent No.7. It is also stated that the restriction of 500 meters of Coastal Regulation Zone came into force on and from 19th February, 1991 and that construction was already in existence before that date. It is further stated that near the place in question on the coast of Arabian sea, there already exist Saibaba Mandir, Dharamshala, Guest House etc. and that the Jain Bandu Tripathi Mandir, Shanti Niketan etc. are situated on the same coast-line. The Government guest house, Toran Restaurant of the Gujarat Tourism Development Corporation etc. are also on the same coast-line. It is further stated that the renovation work was undertaken in respect of the temple premises in existence before 1991 with the permission of the Gram Panchayat, Kosamba and that at present there exists a temple with idols of Shree Krishna, Ram, Shiva - Parvati, Hanumanji, Ganeshji and also of deities Sahajanand Swami, Gunatitanand Swami and Ghanshyam Maharaj. It is also pointed out by the Collector in his affidavit that out of the land bearing survey No.110, which admeasured 110 acres and 23 gunthas, 30 acres and 28 gunthas were given

to the Customs Department in 1939; 30 acres were given to the Forest Department in 1947 and 1 acre was given to a school in 1967, and, out of 58 acres, 9,332 sq.mtrs of land was given to the respondent No.7. It is stated that the said land was Government kharaba land out of which a portion is given to the respondent No.7. It is further stated that there were so many other structures standing in the line of the temple of the respondent No.7 on the sea-coast and that the petitioner never took any objection as regards any of those structures. It is stated that the petition is filed by the Panchayat treating it to be a pollution matter with an ulterior motive and that there is no pollution or breach of environment law by the temple. A copy of the permission granted by the Forest and Environment Department is annexed at Annexure-II to the affidavit in reply.

4.7 The said environmental clearance dated 30.12.1997 was granted with reference to the application made by the respondent No.7 on 9th July, 1997 for temple renovation and other related activities. It is recorded therein that the proposal was examined and the environmental clearance under CRZ Notification of 1991 was accorded subject to the conditions mentioned therein. These conditions read as under:-

"(1) The Sanstha shall strictly adhere to the provisions of the CRZ Notification of 1991 and the subsequent amendments issued from time to time.

(2) Necessary permissions to carry out the proposed activities shall be obtained from the concerned departments before commencing such activities;

(3) Ground water shall not be extracted by the Sanstha in any case.

(4) The renovation of the existing structure shall be done as per the para 6(2) CRZ-III of the CRZ notification dated 19.2.1991 and the amendments issued by the Ministry of Environment and Forests, Government of India, from time to time.

(5) There shall not be any kind of domestic waste, discharged in to the sea.

(6) Garbage and other solid waste shall not be discharged into the sea or within CRZ area.

(7) The Sanstha shall undertake massive afforestation

programme in consultation with the Forests Department.

(8) The Sanstha shall strictly abide by the commitments/undertakings given by them.

(9) Construction debris/materials shall not be disposed of into the sea or in the CRZ area.

(10) Sanstha shall comply with any other condition/s that may be imposed by the competent authority/authorities from time to time.

(11) Quarterly progress report with respect to the compliance of these conditions shall have to be submitted by the Sanstha to this Department.

This Department may revoke or suspend the clearance, if implementation of any of the above conditions are not complied with."

4.8 It is specifically stated in the affidavit of the Collector that all the constructions already existed prior to 1991 i.e. much prior to the coming into force of the Notification dated 19.2.1991 and CZM plan on 27.9.1996, and that when the renovation/repairs of the existing structure was done by the respondent No.7, the Gram Panchayat did not oppose at the relevant time. It is stated that the State Government is authorised to grant permission for such project the cost of which was below Rs. 5 crores.

5. From the affidavit filed by the Collector, it is clear that the grant has been made after taking into account the relevant factors in exercise of the statutory powers of the Government and the Collector to make such grants and that the conditions imposed therein took sufficient care of the right of the village people to use the road and draw water from the wells. The fact that a portion covered by the road and the wells was not granted to the respondent No.7 and was kept out of the grant though asked for, indicates proper application of mind on the part of the State Government in making the grant. The fact that necessary conditions ensuring observance of the environment law provisions were imposed also indicates that the State Government had taken sufficient safeguards while making the grant. We therefore, do not find any valid reason to interfere with the grant. The allegation that the grant was made with a view to favour a particular religious denomination cannot be accepted. Just because the grant was made to the respondent No.7

which is a religious institution, it cannot be inferred that it was made with a view to favour a particular religious denomination. The State was free to make such grants in favour of any religious institution set up by any religious denomination. The State has no religion of its own. Those who are in power may have their personal beliefs, but they cannot be read or transmitted in State action. If that is allowed, then even a lawful State activity will be doubted as being actuated with a view to favour a particular religious denomination. The inference that the learned Counsel for the petitioner wanted us to draw of religious favouritism has absolutely no basis and we do not find any warrant whatsoever for drawing such an inference. No religious institution set up by a religious denomination can be denied its rights and equal treatment simply because the persons at the helm of affairs in the State Government may be having their own religious beliefs. Unless and until the State action is tainted with an idea of showing undue favour, for which there has to be some positive indication on record, it would be very hazardous to infer that the State action was actuated with a view to favour a particular religious institution. We are therefore, unable to accept the contention on behalf of the petitioner that the impugned grant is arbitrarily made or that it violates the fundamental rights guaranteed by Articles 14 or 21 of the Constitution. We are also unable to accept the contention that the impugned grant is contrary to law.

6. We now proceed to examine the contention raised on behalf of the petitioner that the impugned grant violates the Coastal Regulation Zone Notification dated 19.2.1991. A copy of that notification has been annexed at Annexure "U" to the petition. It was issued by the Central Government under Section 3(1) and Section 3(2)(v) of the Environment (Protection) Act, 1986 and Rule 5(3)(d) of the Environment Protection Rules, 1986, declaring coastal stretches as Coastal Regulation Zone (CRZ). The Central Government declared the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) upto 500 meters from the High Tide Line (HTL) as Coastal Regulation Zone and imposed with effect from the date of the Notification, the restrictions on setting up and expansion of industries, operations or processes etc. in the said Coastal Regulation Zone (CRZ). Under the head "Prohibited Activities", thirteen activities have been enumerated as the activities which are prohibited within the Coastal Regulation Zone. Reliance was placed on item (xi) under which the

construction activities in ecologically sensitive areas as specified in Annexure-I of the Notification are prohibited. It was initially argued that the area in which the temple of the respondent No.7 is constructed, is ecologically sensitive area and therefore, no reconstruction could have been done by the respondent No.7 in the land in question. This submission is a sheer misreading of clause (xi) and Annexure-I. Annexure-I of the Notification lays down Coastal Area Classification and Development Regulations. The classification of coastal area is done into four categories for regulating development activities in the coastal stretches within 500 meters of the High Tide Line. Reference to ecologically sensitive areas is in Category-I (CRZ-I), which mentions at item (i) the areas that are ecologically sensitive and important, such as national parks, marine parks, sanctuaries, reserve forests, wildlife habitates, mangroves, coral/coral reefs, areas close to breeding and spawning grounds of fish and other marine life, areas of outstanding natural beauty/historical heritage areas, areas rich in genetic diversity, areas likely to be inundated due to rise in sea level consequent upon global warning and such other areas as may be declared by the Central Government or the concerned authorities at the State/Union territory level from time to time.

6.1 The Coastal Zone Management Plan of Gujarat was approved by the Government of India on 27th September, 1996, subject to certain conditions and modifications by their Order No.J-17011/42/95-IA-III dated 27th September, 1996. Preparation of such plans by the State was contemplated by the Notification dated 19th Feb. 1991. In the Gujarat Plan in Chapter 4, deals with Classification of Coastal Regulation Zones, and therein the areas identified in CRZ-I category are the same as the areas which are enumerated in CRZ-I of the main notification. CRZ-III category includes areas that are relatively undisturbed and those which do not belong to either CRZ-I or CRZ-II and this would include (1) Coastal areas in the rural areas (developed and undeveloped) and (2) The areas within Municipal limits or in other legally designated urban areas which are not substantially built up. The particulars of areas classified under CRZ-III are given in paragraph 4.2.3 of the Gujarat plan and these include category of Rural areas and of all Coastal areas not belonging to CRZ-I or CRZ-II. It will be noted that even in its own petition in paragraph 27, the petitioner has stated that the land in dispute falls within CRZ-III and therefore, all the conditions applicable to CRZ-III would be applicable to the land in

dispute. It is clear from the Gujarat plan as well as from the Coastal Regulation Zone Notification dated 19.2.1991 that the area in question is not ecologically sensitive area falling in category-I (CRZ-I). Therefore, there is absolutely no substance in the contention raised on behalf of the petitioner that the construction activity in the said area is totally prohibited under clause (xi) under the heading `Prohibited Activities' in the CRZ Notification dated 19.2.1991.

6.3 It was next contended that the area upto 200 meters from the High Tide Zone is to be ear-marked `No development zone' even in CRZ Category III under the said notification and therefore, no construction could be permitted within that zone except for repairs of existing authorised structures not exceeding the existing FSI, existing plinth area and existing density. It will be noticed that as per the amendment in the notification dated 19.2.1991, the exception is extended to permissible activities under the notification including facilities essential for such activities. It is also provided that an authority designated by the State/Union territory administration may permit construction of facility for water supply, drainage and sewerage for requirements of local inhabitants. The permissible use in the zone are agriculture, horticulture, gardens, pastures, parks, play-fields, forestry and salt manufacture from sea water. The development of vacant plots between 200 and 500 meters of High Tide Line in designated areas of CRZ-III with prior approval of Ministry of Environment and Forests is permitted for construction of hotels/beach resorts for temporary occupation of tourists/visitors subject to the conditions stipulated in the guidelines at Annexure-II. One of the contentions raised in the petition is that the respondent No.7 is developing and constructing a beach resort and therefore, the conditions stipulated in Annexure-I and Annexure-II regarding development of beach resort within the stipulated zone were applicable in the matter. It is contended in paragraph 27 of the petition that the respondent No.7 has not taken prior permission of the respondent No.6 and therefore, the development and construction carried out by them is illegal. It is obvious that construction of a temple cannot be termed as a construction of a beach resort as contemplated by clause (ii) of category CRZ-III of the Coastal Regulation Zone notification. Therefore, there was no question of the Respondent No. 7 obtaining any prior permission of the Central Government for the purpose of renovating the temple in the land in question. Under Category CRZ-III, construction/reconstruction of dwelling units between 200 and 500 meters of High Tide

Line is permitted so long as it is within the ambit of traditional rights and customary uses, such as existing fishing villages and Gavathans. Such permission is subject to the conditions which are mentioned in the said clause. It is further provided that construction is allowed for permissible activities under the notification including facilities essential for such activities. The permissible activities would be activities which are other than prohibited activities which are specifically set out under the heading `Prohibited Activities'. It is also laid down in this clause that an authority designated by the State Government/Union territory may permit construction of public rain shelters, community toilets, water supply, drainage, sewerage, roads and bridges and may also permit construction of schools and dispensaries for local inhabitants of the area for those Panchayats the major part falls with CRZ, if no other area is available for construction of such facility. Clause (iv) of Category CRZ-III provides for regulation of reconstruction/alterations of an existing authorised building permitted under clauses (i) to (iii). It will thus, be seen that the construction or reconstruction as the case may be of the areas falling upto 500 meters from the High Tide Line is regulated by the norms prescribed for the purpose.

6.4 It was contended on behalf of the petitioner that only authorised structure could be reconstructed or renovated. It was even argued that the temple was not in existence and in any case it was not an authorised structure prior to the coming into force of the said notification. The learned Counsel for the petitioner contended that the old structure, if at all it existed, was never authorised. It was submitted that in any event, the structure was within the `no development zone' and could never have been regularised. In our opinion, it is too late in the day for the Panchayat to raise the contention that the structure was unauthorised having itself approved the plans on 19.11.1990. There is positive evidence indicating that the Panchayat had approved the plan which was submitted by the respondent No.7 for the rejuvenation of the temple. We have noted above that after the Gram sabha had, under its resolution dated 4.2.90, handed over the land in question for the purpose of temple to the respondent No.7, an application was made by the respondent No.7 on 17.11.1990 for approval of the building plan. The plan were submitted in triplicate and it is in context of that application which was placed before the Panchayat through Karsanbhai Tundel that the resolution No.3 was passed by the Panchayat on 19.11.1990 approving the construction

activity which was proposed in the said application dated 17.11.1990 by the respondent No.7. The Talati-cum-Secretary of the Panchayat, on the basis of the said resolution of the Panchayat, returned two copies of the approved plan to the respondent No.7 on 21.11.1990. It is also significant to note that the Panchayat had assessed the construction which was made by the respondent No.7 for the purpose of recovering property tax for the year 1990-91 and the later years 1993-94 to 1995-96. Copies of these documents at Ex.IV to the affidavit-in-reply of the respondent No.7 show that there already existed temple and other pucca structures belonging to the respondent No.7 institution in 1990-91. The annual letting value was assessed at Rs. 80,000 and the tax was assessed at Rs. 400 per year. It would be noted from the communication dated 27th Aug. 1997, a copy of which is at Ex. IX to the affidavit-in-reply of the respondent No.7 that for the purpose of obtaining the requisite clearance, particulars were supplied showing the construction which existed prior to 19.2.91 in the land in question. Even earlier when application was made on 28.2.91 (Ex.V to the affidavit-in-reply of the respondent No.7) to the Chief Minister sending proposal for regularising the encroachment, there was a clear reference to the resolution passed by the Gram Panchayat approving the construction activity, which the respondent No.7 was expected to carry out in the area given to it under the resolution of the Gram sabha on 4.2.90. When on the basis of the material which was submitted before the State Government, it had concluded that the construction already existed prior to 19.2.1991, it would not be appropriate for this Court to sit in appeal over such a factual decision and take a different view of the matter.

6.5 In the context of the Coastal Zone Regulation notification, the respondent No.7 made an application on 9th July, 1997 to the Director of the Environment, praying for the approval of the authority in respect of the construction activities which were done in the area in question. In that application, the manner in which the land came to be handed over to the respondent No.7 was narrated and it was pointed out that as per the plans the construction was done in October, 1990 upto plinth level, that thereafter application was made on 17.11.1990 to the Panchayat for the approval of the plan which was sanctioned in the meeting convened on 19.11.1990 by the resolution No.3 and that the plans were sanctioned as per the communication of Talati-cum-Secretary on 21st Nov. 1990. It was also pointed out that the approval of the

Government was sought by an application dated 11.1.1991, and, thereafter on 28.2.1991, an application was also made to the then Chief Minister for regularisation of the occupation of the respondent No.7. It was pointed out that pursuant to this proposal, the orders were made regularising the occupation and the market price of the land was deposited on 27.12.1996 by the institution with the Government. The measurements of the construction which existed according to the respondent No.7 prior to 1991, were set out in this application. It was pointed out that the estimated cost of renovating the temple was 2.5 crores which was less than rupees 5 crores and therefore, approval was being sought from this authority. Copy of the order of the Collector, by which the land was granted, was forwarded with this application and attention was drawn of the authority to condition No.4 thereof, which recorded that no new construction other than the existing construction - namely, old temple, Sant nivas, sabha khand, store room, boring, garrage, book stall and staff quarters would be made. It was stated that there was authorised construction made prior to the coming into force of the Notification in 1991. Alongwith this application, nine annexures were forwarded for indicating that there was authorised construction in the land in question and that it was granted to the respondent No.7 under the Collector's order dated 31.12.1996. As noted above, this proposal was examined by the Government of Gujarat in its Forest and Environment Department and by order dated 30.12.1997, which is at Annexure-II to the affidavit-in-reply of the Collector, the environment clearance was granted under the CRZ Notification of 1991 for the renovation of the temple on the conditions which are referred to hereinabove by us. Later, on 11.3.1998, the Government, in response to the letter of the respondent No.7 dated 28.1.1998, intimated to them that there was no objection in the respondent No.7 maintaining the temple shrine height at 18 meters. Under the conditions on which the environment clearance was granted to the respondent No.7, it was clearly stipulated that it shall strictly adhere to the CRZ Notification of 1991 as amended from time to time and necessary permission to carry out the proposed activities shall be obtained from the concerned Department before commencing such activity. It was also stipulated that the renovation of the existing structure shall be done as per paragraph 6 of the CRZ Notification dated 19.2.1991 as amended from time to time.

6.6 Though the environment clearance was granted in favour of the respondent No.7 by the concerned authority on 30.12.1997, the petitioner did not raise any objection

against such clearance by preferring any appeal to the authority under the National Environment Appellate Authority Act, 1997. Under Section 11 of that Act, it is provided that any person aggrieved by an order granting environmental clearance in the areas in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards, may within thirty days from the date of such order, prefer an appeal to the Authority in such form as may be prescribed, provided that the Authority may entertain any appeal after the expiry of the said period of thirty days but not after ninty days from the said date, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. For the purposes of sub-section (1) of Section 11, the word "person", inter-alia, means any local authority, any part of whose local limits is within the neighbourhood of the area where the project is proposed to be located, as also any person who is likely to be affected by the grant of such clearance or any association or persons likely to be affected by such order and functioning in the field of environment. Not only that the petitioner never approached the said authority under Section 11 of the said Act, it also did not approach the Gujarat Coastal Zone Management Authority constituted in exercise of the powers conferred on the Central Government by Section 3, sub-sections (1) and (3) of the Environment (Protection) Act, 1986, by its order dated 26.11.1998 bearing No. S.O 999(E). The said Gujarat Coastal Zone Management Authority is, inter-alia, empowered to enquire into cases of alleged violation of the provisions of the said Act and Rules made thereunder or under any other law which is relatable to the objectives of the said Act and if found necessary in a specific case to issue directions under Sec.5 of the said Act in so far as such directions are not inconsistent with any direction issued in that specific case by the National Coastal Zone Management Authority or by the Central Government and also to review cases involving violations of the provisions of the said Act and the Rules made thereunder, or any other law which is relatable to the objects of the said Act. The authority is also empowered to file complaints under Section 19 of the said Act in cases of non-compliance of the directions issued by it. The functions of the authority are made subject to the supervision and control of the Central Government. Thus, by-passing the statutory provisions and without raising any objection whatsoever against the grant of environmental clearance in favour of the respondent No.7, the petitioner has after an unexplained silence and inaction for nearly two

years, suddenly raised this question before this Court. It is not for this Court to go into the actual details of the construction - namely whether it is within 200 meters or upto 500 meters of the HTL or whether there in fact existed authorised construction. The authority which has granted the clearance is presumed to have applied its mind to all the relevant aspects of the matter before granting clearance and that clearance not having been challenged under the law before the appellate authority, cannot be subjected to review in a belated petition of this nature, by this Court.

6.7 Moreover, though the facade of environmental protection is assumed by the petitioner, the root cause appears to be the rivalry between the two religious factions namely one believers of the religious denomination of the respondent No.7 and the others who do not believe in it. It is held by the Supreme Court in Subhash Kumar Vs. State of Bihar and ors., reported in AIR 1991 S.C 420 and referred to by the learned Additional Advocate General, that it is the duty of the Court to discourage petitions which are filed for the purpose of vindication of personal grudge or enmity and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extra-ordinary jurisdiction of the Supreme Court for personal matters under the garb of the public interest litigation. We are not far away from this ratio when we invoke it in a matter which has been filed under the garb of environmental protection while trying to vindicate the grudge of a section of the village people, who do not subscribe to the leanings of those who believe in the religious denomination of the respondent No.7 institution and with whom they had exchanged criminal complaints over the clashes that took place when the conflict over construction that obstructed the road, had started somewhere in February, 1996.

6.8 Reliance was placed on behalf of the petitioner on the decision of the Supreme Court in Indian Council for Enviro-Legal Action Vs. Union of India and ors., reported in (1996) 5 Supreme Court Cases 281, in which the Hon'ble the Supreme Court while considering the said notification dated 19.2.1991, held that violation of anti-pollution laws not only adversely affects existing quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of environment, the adverse effect of which will have to be borne by the future generations. It was held that the legal position relating to the exercise of jurisdiction by the courts for preventing environmental

degradation and thereby, seeking to protect the fundamental rights of the citizens, is now well settled by various decisions of the Supreme Court. It is further held that eventhough it is not the function of the court to see the day-to-day enforcement of the law, that being the function of the executive, but because of the non-functioning of the enforcement agencies, the courts as of necessity have had to pass orders directing the enforcement agencies to implement the law for the protection of the fundamental rights of the people. The Supreme Court suggested that considering the fact that the Pollution Control Boards are not only overworked and have a limited role to play in so far as it relates to controlling of pollution, for the purpose of ensuring effective implementation of the notifications of 1991 and 1994, as also of the Management Plans, the Central Government should consider setting up under Section 3 of the Act, State Coastal Management Authorities in each State or zone and also a National Coastal Management Authority. It was also directed that the State which did not file management plans with the Central Government should file them by 30.6.1996. It is clear that pursuant to the direction given by the Hon'ble the Supreme Court, the Gujarat Coastal Management Plan was prepared and approved by the Central Government by its order dated 27th Sept. 1996 referred to hereinabove. We have also referred to the National Environmental Appellate Authority Act, 1997, under which the appellate authority is empowered to examine the validity of environmental clearances that may be granted. As noted above, the petitioner never challenged the environmental clearance granted to the respondent No.7, before the appellate authority or before the Gujarat Coastal Zone Management Authority constituted by the Central Government as referred to hereinabove. In any event, we find from the record that adequate safeguards have been taken to ensure that the respondent No.7 abides by the provisions of the CRZ Notification dated 19.2.1991 as amended from time to time. Therefore, if any breach is committed by the respondent No.7 by not complying with the environmental safeguards which they are expected to comply, the appropriate authority can and will take suitable action in accordance with law against the respondent No.7. Since, according to the concerned authority there already existed construction and that it was only a matter of renovation, it will not be open for us to sit in judgement over such finding of fact in exercise of our writ jurisdiction. We cannot be called upon to decide any disputed questions of fact by raising controversies which have bearing on factual aspects of the matter.

6.9 Reliance was also placed on the decision of the Supreme Court in M.C. Mehta Vs. Kamal Nath and ors. reported in (1997) 1 SCC 388, in which the Hon'ble the Supreme Court held that our legal system includes the public trust doctrine as part of its jurisprudence and the State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands and the State, as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership. In the case before the Supreme Court, the course of river was sought to be diverted, which would disturb the natural flow of water. It was found that the lease-hold area in possession of the motel was a part of the protected forest land owned by the State Government. The Board in its report had opined that the clause in the lease agreement for protection of land did not permit the motel to block the flood spill/relief channel of the river. The report categorically stated that no new construction should be allowed in the flood prone area and no economic activities should be permitted in the said stretch. In paragraph 35 of the judgement the Court observed that the resolution of conflict between those who preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities, who, under the pressure of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change, in any given case, is for the legislature and not for the Courts. It was observed that if there was the law made by the Parliament or the State Legislatures the Courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution, but in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. This decision cannot help the petitioner because the entire stretch of land of survey No.110 as also its adjoining land is a village site land and practically a large part of the village exists in this area. There are constructions in the vicinity as found by the authorities, a fact that has remained undisputed. Furthermore, the State Government has exercised its power under the statute to grant the land and has ensured that the environmental laws are not violated, by imposing suitable conditions in the grant. The concerned authority constituted for the purpose of giving

environmental clearance has given its clearance after taking into consideration the relevant aspects in accordance with the said Notification dated 19.2.1991, in so far as it deals with the category to which the land belongs, namely CRZ-III.

6.10 The learned Counsel for the petitioner then relied upon the decision of the Supreme Court in M.I. Builders Pvt.Ltd. Vs. Radhey Shyam Sahu and ors., reported in JT 1999 (5) SC 42, in which the Hon'ble the Supreme Court held that the action of Mahapalika in agreeing to the construction of underground shopping complex in contravention of the provisions of the U.P Nagar Mahapalika Adhiniyam and then entering into an agreement with the builder against the settled norms was wholly illegal. It was contended before the Supreme Court that the land was disposed of in favour of the builder in contravention of Sections 128 and 129 of the Act and that there was collusion between certain members of the Mahapalika, its officers and the builder. The agreement was assailed as a fraud on the part of the Mahapalika and the prime land was given to the builder for a song. In the case before the Supreme Court, as noted in paragraph 85 of the judgement, the builder got an interim order from the Court and on the strength of that order got sanction of the plan from the Mahapalika and no objection from the LDA. Thus, the land which was originally meant for a park was put to such use by the builder which destroyed the park and in that context and keeping in view the violations of the provisions of law that were committed, the Supreme Court held that there was no alternative except to dismantle the whole structure and restore the park to its original condition leaving a portion constructed for parking. Thus, the ratio of this case can have no application whatsoever to the facts of the present case.

7. In view of what we have stated above, there is absolutely no substance in this petition and none of the contentions raised by the petitioner and it's counsel deserve to be accepted. The petition is therefore, rejected. There shall be no order as to costs. Interim relief stands vacated.

At this stage, the learned Counsel for the petitioner prays for a certificate for appeal to the Supreme Court. In our opinion, this case does not involve any substantial question of law of general importance, which may be required to be decided by the Supreme Court. We therefore, reject this request.

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